

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM
ASSET MANAGEMENT AGREEMENT**

Borrower's D-U-N-S # _____

THIS ASSET MANAGEMENT AGREEMENT (the "Agreement") is entered into as of this ___ day of _____, 20__ (the "Effective Date"), by and among [FSA], an Indiana _____ (the "FSA"), [COMPANY], an Indiana limited _____ (the "Company") and **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana ("IHCDA").

Preliminary Statements

A. Under Section 1602 ("Section 1602") of the American Recovery and Reinvestment Act of 2009 (the "ARRA"), IHCDA made a loan to the Company to supplement or supplant an award of Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code (the "Loan"). The Loan will fund the construction of [**Project Name**] (the "Project") pursuant to that certain loan agreement dated _____, 20__ by and between IHCDA and the Company (the "Loan Agreement").

B. The parties desire for the FSA to provide asset management services to the Company, on IHCDA's behalf, in connection with the Loan, upon the terms and subject to the conditions set forth herein.

Agreement

In consideration of the following mutual promises, covenants, and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Defined Terms. Unless otherwise set forth herein, capitalized terms shall have the meaning set forth in the Loan Agreement or the IHCDA's 2009 Section 1602 – Tax Credit Exchange Program Policies and Procedures (the "Policies and Procedures").

2. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the date that is fifteen (15) years from the first taxable year of the credit period in accordance with Section 42 of the Internal Revenue Code, unless earlier terminated as set forth herein (the "Initial Term"). The parties may agree in writing to extend this Agreement for an additional fifteen (15) year period (the "Renewal Term") at least sixty (60) days prior to the end of the Initial Term. For the purposes of this Agreement, the Initial Term and the Renewal Term (if any) shall be referred to collectively herein as the "Term."

3. Asset Management Services. During the Term, the FSA shall provide asset management services for the Company on behalf of IHCDA with respect to the Loan, including, without limitation, those set forth on Exhibit A, attached hereto and made a part hereof, the Policies and Procedures and as otherwise requested by IHCDA from time to time (collectively, the "Services"). The Services shall include all reporting and other services for the benefit of the IHCDA, as required by the ARRA, and the rules, regulations, guidance and terms and conditions promulgated thereunder. The Services shall also include verification of compliance with Section 42 of the Internal Revenue Code and Section 1602. The FSA may provide the Services itself or by contracting with another professional asset management

company engaged by the FSA at its sole expense. For the purposes of this Agreement, “Asset Manager” shall refer to either the FSA or the professional asset management company engaged by the FSA to perform the Services, as the case may be.

4. Work Standards. The FSA agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If IHCD A becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this contract, IHCD A may request in writing the replacement of any or all such individuals and the FSA shall grant such request.

5. Asset Management Fee.

(a) Fee. In consideration of the Services to be provided by the FSA hereunder, the FSA shall receive a fee in an amount equal to the greater of (a) Five Thousand and No/100 Dollars (\$5,000.00); or (b) One Hundred and No/100 Dollars (\$100.00) per rental unit contained in the Project (the “Asset Management Fee”), annually throughout the Compliance Period (as such term is defined in the IHCD A’s 2009-2010 Qualified Allocation Plan). The Company shall pay such fee on IHCD A’s behalf in accordance with Section 5(b) below. Under no circumstances shall the Company pay any portion of the Asset Management Fee from the proceeds of the Loan or any funds it receives pursuant to the Tax Credit Assistance Program.

(b) Escrow. At the closing of the Loan, the Company shall pay to the FSA on IHCD A’s behalf an amount equal to the total Asset Management Fee to be paid during the Initial Term, which the FSA shall hold and disburse in accordance with the terms and conditions of the Escrow Agreement by and between IHCD A and the FSA dated the date hereof.

(c) No Payment Prior to Compliance Period. Notwithstanding anything to the contrary contained herein, if IHCD A terminates this Agreement in accordance with Section 9 prior to the commencement of the Compliance Period, the FSA understands, acknowledges and agrees that it will not be entitled to receive any portion of the Asset Management Fee or other compensation for services performed to date.

6. Cooperation. The Company shall cooperate with the FSA in the provision of the Services hereunder, and shall respond in a timely manner to all reasonable requests by the FSA to provide information and/or access to its personnel and records in accordance with this Agreement. The Company understands, acknowledges and agrees that its failure to comply with this Section 6 and any other of its obligations under this Agreement shall constitute a breach of the Loan Agreement for which IHCD A shall be entitled to pursue any and all rights and remedies available to it under the Loan Agreement, and for which the FSA may place the Company on the Watch List as set forth in Exhibit A.

7. Access to Records. The FSA and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during the Term, and for three (3) years from the date of final payment under this Agreement, for inspection by the IHCD A or its authorized designees. Upon request, copies shall be furnished at no cost to IHCD A.

8. Compliance with Laws and Policies and Procedures.

(a) The FSA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including, without limitation, all provisions required thereby to be included herein, which are hereby incorporated by reference, and the Policies and Procedures, as the same may be amended from time to time, Section 42 of the Internal Revenue Code, and the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the IHCD A to determine whether the provisions of this Agreement require formal modification.

(b) The FSA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 *et seq.*, Ind. Code § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the FSA is not familiar with these ethical requirements, the FSA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the FSA or its agents violate any applicable ethical standards, IHCD A may, in its sole discretion, terminate this Agreement immediately upon notice to the FSA. In addition, the FSA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

(c) The FSA certifies by entering into this Agreement that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the FSA agrees that any payments in arrears and currently due to the State may be withheld from payments due to the FSA. Additionally, further payments may be withheld, delayed, or denied and/or this Agreement suspended until the FSA is current in its payments and has submitted proof of such payment to IHCD A.

(d) The FSA warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State pending, and agrees that it will immediately notify the State of any such actions. During the term of such actions, FSA agrees that IHCD A may direct the Company to delay, withhold, or deny work under any supplement, amendment or contractual device issued pursuant to this Agreement.

(e) If a valid dispute exists as to the FSA's liability or guilt in any action initiated by the State or its agencies, and IHCD A decides to delay, withhold, or deny funding to the FSA, the FSA may request that it be allowed to continue, or receive work, without delay. The FSA must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that IHCD A may direct the Company to delay, withhold, deny, or apply under this section shall not be subject to penalty or interest except as permitted by IC 5-17-5.

(f) The FSA warrants that it shall obtain and maintain all required permits, licenses, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so is a material breach and grounds for immediate termination of this Agreement and denial of further work with the State.

(g) The FSA hereby affirms that if it is an entity described in Indiana Code Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

(h) As required by IC 5-22-3-7:

(i) The FSA certifies that (1) the FSA, except for de minimis and nonsystematic violations, has not violated the terms of (A) IC 24-4.7 [Telephone Solicitation Of Consumers], (B) IC 24-5-12 [Telephone Solicitations] , or (C) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (2) the FSA will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

(ii) The FSA certifies that an affiliate of the FSA and any agent acting on behalf of the FSA or on behalf of an affiliate of the FSA (1) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (2) will not violate the terms of IC 24-4.7 for the duration of this Agreement, even if IC 24-4.7 is preempted by federal law.

9. Termination.

(a) By IHCD A for Breach. IHCD A may immediately suspend or terminate this Agreement if the FSA fails to comply with any material term of the Agreement, any applicable law or regulation, or the Policies and Procedures.

(b) By IHCD A or the FSA. Further, this Agreement may be terminated at any time, by IHCD A or the FSA, with or without cause, upon sixty (60) days written notice. Written notice of such termination must be sent to the other parties by certified mail, return receipt requested, postage prepaid. After mailing of such notice of termination, no new or additional liabilities shall be incurred by the FSA without the prior written approval of IHCD A.

10. Insurance and Indemnification.

(a) Insurance. During the Term, the FSA shall obtain and maintain, at its expense, with an insurer acceptable to IHCD A, comprehensive general liability insurance for full coverage of claims to a limit of at least Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate with coverage shown as primary to any other coverage available to IHCD A. The FSA shall deliver to IHCD A a certificate of insurance as soon as practicable upon execution of this Agreement evidencing coverage or IHCD A shall have the right to terminate this Agreement immediately. The certificate shall demonstrate the following: (i) IHCD A is a certificate holder with thirty (30) days notice rights and (ii) the policy names IHCD A as an additional insured on a primary, non-contributory basis.

(b) Indemnification. The FSA shall indemnify, defend, and hold harmless IHCD A, its directors, officers, employees, and agents of and from any and all claims, losses, damages, or expenses (including reasonable attorneys' fees) arising out of or in any way related to (i) any breach or alleged breach by the FSA of any provision of this Agreement or any material inaccuracy of any representation or warranty made by it herein, (ii) any act or omission by the FSA, its employees, agents, representatives or affiliates, directly or indirectly, related to its performance of this Agreement constituting negligence, recklessness or willful misconduct; and (iii) any alleged failure on the part of the FSA, its employees, agents, representatives or affiliates to comply with federal, state and local laws and regulations, including without limitation, the Policies and Procedures. IHCD A shall not provide any such indemnification to the Company or the FSA.

11. Independent Contractor. The parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees of one party shall not be deemed or construed to be the employees or agents of the other parties for any purpose whatsoever. Except as provided in Section 10(b), neither party will assume liability for any injury to any persons, or any damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

11. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement relating to the subject matter hereof among the parties hereto. Each party acknowledges that no representation, inducement, promise or agreement has been made, orally or otherwise, by any other party, or anyone acting on behalf of any other party, unless such representation, inducement, promise or agreement is embodied in this Agreement expressly or by incorporation.

(b) Governing Law; Choice of Venue. This Agreement shall be construed and governed in accordance with the laws of the State of Indiana. The parties agree to submit to the exclusive jurisdiction and venue of the courts of Marion County, Indiana for any action arising out of this Agreement.

(c) Successors. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the parties hereto, their heirs, executors, administrators, successors and assigns. The FSA and the Company may not assign this Agreement without the express prior written consent of IHCD.

(d) Amendments and Waivers. This Agreement may not be amended and compliance with any provision of this Agreement may not be waived except in a writing signed by all of the parties hereto; provided, however, that IHCD may amend this Agreement unilaterally in order to comply with a change in an applicable law, rule, regulation or directive.

(e) Severability. If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions of this Agreement shall nevertheless continue in full force and effect.

(f) Third Party Beneficiaries. The obligations of each party under this Agreement shall inure solely to the benefit of the other parties and IHCD, and no other person or entity shall be a third party beneficiary of this Agreement.

(g) Notices. Notice shall be deemed to have been given under this Agreement whenever any notice, statement, or other communication shall be delivered in person, or sent via overnight delivery service maintaining records of receipt to the address below, unless otherwise requested in writing:

If to the Company:

[Contact Name]
[Street Address]
[City, State Zip]

If to the FSA:

[Contract Name]
[Street Address]

[City, State Zip]

If to IHCD:

Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, Indiana 46204
Attention: MultiFamily Manager

With copy to:

Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, Indiana 46204
Attention: General Counsel

A party's address for notice may be changed from time-to-time only by written notice given to each of the other parties in accordance with this Section.

(h) Counterparts. This Agreement may be executed in several counterparts all of which shall constitute one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signatories on the same counterpart.

NON-COLLUSION AND ACCEPTANCE

The undersigned attest, subject to the penalties for perjury, that he/she is the Company or FSA, or that he/she is the properly authorized representative, agent, member or officer of the Company or the FSA, as the case may be, that he/she has not, nor has any other member, employee, representative, agent or officer of the Company or the FSA, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, the Company, the FSA and IHCD A have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Dated this _____ day of _____, 20__.

COMPANY:

By: _____

Name: _____

Title: _____

FSA:

By: _____

Name: _____

Title: _____

IHCDA:

Indiana Housing & Community Development Authority

By: _____

Name: _____

Title: _____

1438901_10;